

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CHARLES ANTHONY KEGLER,)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO. 04-HS-2451-S
)	
WILLIE THOMAS, WARDEN; ATTORNEY)	
GENERAL FOR THE STATE OF ALABAMA,)	
)	
Respondents.)	

MEMORANDUM OF OPINION

Charles Anthony Kegler, AIS # 127802, hereinafter referred to as petitioner, filed this petition for writ of habeas corpus on August 10, 2004 challenging his February 25, 1987 Jefferson County manslaughter conviction and sentence. This same conviction was also the subject of two previous habeas petitions, *Kegler v. State*, CV 91-A-0213-M, and *Kegler v. State*, CV 93-H-2727-NE.

Title 28 U.S.C. Section 2244(b)(3)(A) provides:

Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

In *Hill v. Harper*, 112 F.3d 1088, 1089 (11th Cir.), *cert. denied*, 520 U.S. 1203 (1997) the Court of Appeals for the Eleventh Circuit held that where the petitioner had not applied to it for permission to file a second habeas petition the district court lacked jurisdiction under 28 U.S.C. § 2244(b)(3)(A) to consider petitioner's request for relief.

On January 10, 2005, an order was entered requiring that petitioner provide the court with a copy of an order from the Eleventh Circuit authorizing this court to consider his petition on or before January 28, 2005. The order further advised petitioner that failure to comply with the January 10, 2005 order

would result in a dismissal of this action without further notice. The court has received no authorization from the Eleventh Circuit Court of Appeals; however, on January 31, 2005 petitioner filed a response to the court's January 10, 2005 order (doc. #29) wherein he states "[o]n January 19, 2005, the Eleventh Circuit Court of Appeals denied petitioner's application for leave to file a second or successive application." Inasmuch as the Eleventh Circuit Court of Appeals has not given authorization for this petition, this petition is therefore due to be dismissed due to this court's lack of jurisdiction.

A separate final judgment consistent with this Memorandum of Opinion will be entered simultaneously herewith.

As to the foregoing it is SO ORDERED this the 7th day of February, 2005.

A handwritten signature in black ink, appearing to read "V. Emerson Hopkins", written over a horizontal line.

VIRGINIA EMERSON HOPKINS
United States District Judge